

Federal Communications Commission

DA 01-1390

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Steubenville, Ohio and
Burgettstown, Pennsylvania)

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MM Docket No. 01-6
RM-10009

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 30, 2001

Released: June 8, 2001

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making filed by Keymarket Licenses, LLC ("Keymarket"), the Commission has before it for consideration the Notice of Proposed Rule Making, 16 FCC Rcd 827 (2001), requesting the reallocation of Channel 278B from Steubenville, Ohio to Burgettstown, Pennsylvania, and modification of the license for Station WOGH(FM) to specify Burgettstown as the community of license. Keymarket filed supporting comments in which it stated its intention to file an application for Channel 278B at Burgettstown. No other comments were received in response to the Notice in this proceeding.

2. Based upon the information presented in this proceeding, we believe the public interest would be served by reallocating Channel 278B from Steubenville, Ohio, to Burgettstown, Pennsylvania, since it would result in a preferential arrangement of allotments pursuant to the Commission's Change of Community procedures. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). As stated in the Notice, Burgettstown is an independent community located in Washington County with a 1990 U.S. Census population of 1,634 people. Burgettstown was incorporated in 1881, is governed by a mayor and five member city council and provides police, fire and sewage services to the community. Burgettstown has its own public library, public school system and a Catholic High School, commercial establishments, gas stations and two local post offices. There are five separate churches in Burgettstown as well as the Lions Club and the American Legion. Burgettstown would receive its first local service thus fulfilling allotment priority (3) of the Commission's allotment priorities.¹ This action will not deprive Steubenville of local service as

Stations WDIG(AM), WSTV(AM), and non-commercial Station WBJV(FM) are licensed to the community. Retention of Channel 278B in Steubenville would be considered under priority (4), other public interest matters.

3. The reallocation proposal is consistent with the requirements set forth in Change of Community, *supra*. As stated in the Notice, three Urbanized Areas are affected: Wheeling, West Virginia-Ohio, Steubenville-Weirton, Ohio-West Virginia-Pennsylvania and Pittsburgh, Pennsylvania. However, since no site change is anticipated, coverage to the urbanized areas will remain unchanged. We have not raised a Huntington and Tuck issue as our analysis indicates that coverage to two of the urbanized areas is less than 50 percent and Station WOGH(FM) currently covers 100 percent of the Steubenville-Weirton, Ohio-West Virginia-Pennsylvania Urbanized Area. See Headland, Alabama and Chatahooche, Florida, 10 FCC Rcd 10352 (1995). Under these circumstances it cannot be said that the station is migrating into urbanized areas as it is already there. Cf. East Los Angeles, Long Beach and Frazier Park, California, 10 FCC Rcd 2864 (1995). Additionally, the Notice pointed out that Station WOGH(FM) is a pre-1964 grandfathered station with short-spacings to pre-1964 grandfathered Station WCRF-FM, Cleveland, Ohio and pre-1989 grandfathered Station WANB-FM, Waynesburg, Pennsylvania. We recognize that we are creating a new short-spaced allotment in contravention of Section 73.207 of the Rules. However, we have held that grandfathered FM Stations that were in compliance with our Rules when authorized should be afforded the same opportunity to change their community of license as other stations authorized in conformity with our rules, where there is no change in transmitter site. See Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992), Oceanside and Encinitas, California, 15 FCC Rcd 15302 (1999) and Fremont and Holton, Michigan, 14 FCC Rcd 17108 (1999).

4. Channel 278B can be allotted to Burgettstown, Pennsylvania, in compliance with the Commission's minimum distance separation requirements at Keymarket's specified site.² Keymarket will be required to specify its current licensed site for Station WOGH(FM), Steubenville, Ohio, for the applications for a construction permit and a license for Station WOGH(FM), Burgettstown, Pennsylvania, since the change of community of license is protected as a grandfathered short spaced station. In accordance with Section 1.420(i) of the Commission's Rules, we will modify the license for Station WOGH(FM) to specify operation on Channel 278B at Burgettstown, Pennsylvania, as its new community of license.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective July 23, 2001, the FM Table of Allotments,

¹ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See Revision of FM Assignment Policies and Procedures, 90 FCC Rcd 29 88 (1982).

² The coordinates for Channel 278B at Burgettstown are 40-20-32 and 80-37-14. Although Burgettstown is not changing its site, since the community is located within 320 kilometers of the U.S-Canadian border, the Canadian Government will be advised of the change to the FM Table of Allotments.

Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Burgettstown, Pennsylvania	278B
Steubenville, Ohio	-----

6. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Keymarket Licenses, LLC for Station WOGH(FM), Channel 278B, Steubenville, Ohio, IS MODIFIED to specify operation on Channel 278B at Burgettstown, Pennsylvania, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-19870514KD except for the community as specified above. Any changes, except for those specified, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-1987051KD, except for the community as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

7. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Keymarket Licenses, LLC, licensee of Station WOGH(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license from Steubenville, Ohio to Burgettstown, Pennsylvania.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions relating to the application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**